

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SHAW FAMILY ARCHIVES, LTD., EDITH :  
MARCUS and META STEVENS,

Plaintiffs,

Case No. 05 Civ. 3939 (CM)

-against-

Hon. Colleen McMahon

CMG WORLDWIDE, INC. and MARILYN  
MONROE LLC,

Defendants.

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**DECLARATION OF DAVID STRASBERG**

DAVID STRASBERG, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am Senior Vice President of Defendant Marilyn Monroe LLC (“MMLLC”) and submit this declaration in support of Defendants / Consolidated Plaintiffs’ cross-motion for summary judgment on their public domain claim, and in opposition to Plaintiffs / Consolidated Defendants’ motion for summary judgment dismissing the public domain claim.

2. MMLLC was formed on July 5, 2001 for the purpose of allowing the residuary beneficiaries of Marilyn Monroe’s Estate to properly protect, manage and develop Marilyn Monroe’s right of publicity and other intellectual property rights.

3. On July 5, 2001, Anna Strasberg transferred to MMLLC her entire 75% interest in the Estate of Marilyn Monroe, including, but not limited to, any and all rights of publicity, trademarks, and copyrights. On July 10, 2001, the Anna Freud Centre, the holder of the other 25% interest in the Estate of Marilyn Monroe, including, but not

limited to, any and all rights of publicity, trademarks, and copyrights, likewise transferred its interest in the Estate of Marilyn Monroe to MMLLC.

4. Prior to the formation of MMLLC, the estate of Marilyn Monroe hired CMG Worldwide, Inc. (“CMG”) to act as the estate’s exclusive licensing agent. CMG agreed to use its best efforts to effect and administer licenses for, among other things, trademarks and copyrights related to Marilyn Monroe.

5. For years, MMLLC and CMG (together “Defendants”) have been actively involved in the business of licensing and otherwise exploiting the name, image, persona and likeness of Marilyn Monroe. Prior to this Court’s May 5, 2007 ruling, MMLLC had always understood and believed that it was the lawful owner of such publicity rights.

6. MMLLC intends to continue with the business of licensing and otherwise exploiting Marilyn Monroe’s right of publicity, provided that it is determined that Marilyn Monroe died a domiciliary of the State of California and that MMLLC thus owns Marilyn Monroe’s right of publicity pursuant to California’s right of publicity statute, Cal. Civ. Code § 3344.1.

7. However, even if it is eventually determined that MMLLC does not possess any right of publicity in Marilyn Monroe, Defendants do possess other Marilyn Monroe-related intellectual property rights that they intend to continue to exploit and license. For example, MMLLC is the registered owner of over 35 trademark applications and registrations in more than 25 countries worldwide, including five live U.S. federal trademark registrations for the mark “MARILYN MONROE”, either as a word mark or in the form of Marilyn Monroe’s stylized signature. The five U.S. trademark registrations are described more fully below.

8. On October 25, 1988, the U.S. Patent & Trademark Office issued to the Executor of the Estate of Marilyn Monroe c/o Aaron Frosch federal Trademark Registration No. 1,509,758 on the Principal Register for the stylized signature of Marilyn Monroe for use with various forms of perfume, watches, clothing patterns, ballpoint pens, posters, greeting cards, slippers, panties, dresses, swimsuits, paper dolls and balloons.

Attached as Exhibit A is a true and correct copy of the registration certificate for U.S. Trademark Registration No. 1,509,758 (the “‘758 Trademark”).

9. Attached as Exhibit B is a true and correct copy of a recorded assignment, whereby Aaron Frosch, as Executor of the Estate of Marilyn Monroe, assigned the ‘758 Trademark to Anna Strasberg, as Administratrix C.T.A. of the Estate of Marilyn Monroe.

10. Attached as Exhibit C is a true and correct copy of a recorded assignment, whereby Anna Strasberg, as Administratrix C.T.A. of the Estate of Marilyn Monroe, assigned the ‘758 Trademark to Marilyn Monroe LLC.

11. Attached as Exhibit D is a true and correct copy of a January 30, 1995 Notice of Acceptance from the U.S. Patent & Trademark Office, whereby the ‘758 Trademark was renewed.

12. On April 18, 1995, the U.S. Patent & Trademark Office issued to the Administratrix C.T.A. of the Estate of Marilyn Monroe federal Trademark Registration No. 1,889,730 on the Principal Register for the stylized signature of Marilyn Monroe for use with various forms of eyewear, gift bags and calendars, collector plates, towels, porcelain dolls, wine, and historical figures. Attached as Exhibit E is a true and correct copy of the registration certificate for U.S. Trademark Registration No. 1,889,730 (the “‘730 Trademark”).

13. Attached as Exhibit F is a true and correct copy of a recorded assignment, whereby Anna Strasberg, as Adminstratrix, C.T.A. of the Estate of the Marilyn Monroe, assigned the '730 Trademark to Marilyn Monroe LLC.

14. On August 11, 1998, the U.S. Patent & Trademark Office issued federal Trademark Registration No. 2,180,950 on the Principal Register for the word mark "MARILYN MONROE" for use with various forms of stamps and other paper goods. Attached as Exhibit G is a true and correct copy of the registration certificate for U.S. Trademark Registration No. 2,180,950 (the "'950 Trademark").

15. Attached as Exhibit H is a true and correct copy of a recorded assignment, whereby Anna Strasberg, as Adminstratrix, C.T.A. of the Estate of the Marilyn Monroe, assigned the '950 Trademark to Marilyn Monroe LLC.

16. On February 16, 1999, the U.S. Patent & Trademark Office issued federal Trademark Registration No. 2,223,599 on the Principal Register to Anna Strasberg, as Adminstratrix, C.T.A. of the Estate of the Marilyn Monroe, for the word mark "MARILYN MONROE" for use with various forms of clothing. Attached as Exhibit I is a true and correct copy of the registration certificate for U.S. Trademark Registration No. 2,223,599 (the "'599 Trademark").

17. Attached as Exhibit J is a true and correct copy of a recorded assignment, whereby Anna Strasberg, as Adminstratrix, C.T.A. of the Estate of the Marilyn Monroe, assigned the '599 Trademark to Marilyn Monroe LLC.

18. On August 16, 2005, the U.S. Patent & Trademark Office issued federal Trademark Registration No. 2,985,935 on the Principal Register to Marilyn Monroe LLC for the word mark "MARILYN MONROE" for use with various leather goods. Attached

as Exhibit K is a true and correct copy of the registration certificate for U.S. Trademark No. 2,985,935.

19. CMG and MMLLC are actively engaged in the business of licensing and otherwise exploiting the trademarks discussed above.

20. In addition, MMLLC also owns copyrights to a number of collections of photographs of Marilyn Monroe, including a collection of photographs by the famous photographer Frank Worth.

21. It is my understanding that a variety of Sam Shaw's photographs of Marilyn Monroe published in various newspapers and magazines during the 1950s that were published without the proper copyright notice and are therefore in the public domain, that photographs of Marilyn Monroe in the book *Marilyn Monroe. The Life. The Myth.* by Rizzoli International Publications, Inc. have already been deemed to be in the public domain, and that the 1955 book *Marilyn Monroe as the Girl* published by Ballantine Books, Inc. is in the public domain.

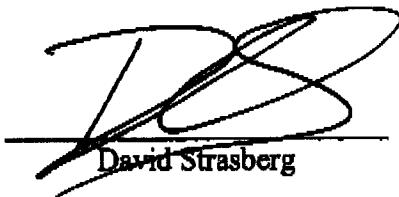
22. I understand that CMG typically provides licensees and potential licensees with a collection of public domain Marilyn Monroe images, for use in conjunction with any trademarks and/or copyrights they may license from Defendants. I further understand that CMG offers these public domain images to licensees and potential licensees on CMG's website, as well as on a CD.

23. MMLLC wishes to include the public domain photographs of Marilyn Monroe taken by Sam Shaw in the collection of images that CMG offers to licensees and potential licensees. However, because of the Shaw Family's refusal to acknowledge that any photographs of Marilyn Monroe taken by Sam Shaw have entered the public domain

and the threat of litigation posed by the Shaw Family, MMLLC and CMG are refraining from using those photographs absent a declaration that they are in the public domain.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 12, 2008  
New York, New York

  
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David Strasberg